

REMARKS

Reexamination and reconsideration of claims 1-27, 29-42, and 44 are respectfully requested. Applicants request entry of this reply into the record because it places the application in better condition for appeal. Applicants respectfully request a telephone interview after the Examiner reviews this Reply.

Claims 1-5, 7-9, 11, 13-23, 26, 28, 30 and 31 were rejected under 35 U.S.C. sec. 102(b) applying WO99/53353 (the '353 publication). The '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other in such a way that they provide a substantially circular seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

It is respectfully submitted that the '353 publication does not teach each and every limitation of independent claims 1 and 17. Additionally, the amendment of claims 1, 17, and 32 is not an admission that the art of record alone or in combination teaches, discloses, or otherwise suggests the features of the claims. Rather, the amendment of claims 1, 17, and 32 merely recites the relation between the fiber access opening and the cable jacket that inherently exists.

It is beyond refute that the '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other in such a way that they provide a substantially circular seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. Moreover, the opening of the inner profiled body is not in communication with the cable jacket and the outer profile body must be removed in order access the optical fiber. See Figs. 1-9 of the '353 publication.

On the other hand, as shown in Fig. 2 the present invention

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is advantageous because once the jacket 17 is removed the optical fiber 11 can be removed through the fiber access opening. See, for example, Fig. 2 and p. 9, 11. 10-13 of the present invention. Thus, independent claims 1 and 17 are patentable over the '353 publication. For at least the reasons stated, the withdrawal of the sec. 102(b) rejection of claims 1-5, 7-9, 11, 13-23, 26, 28, 30, and 31 is warranted and respectfully requested.

Claims 1 and 17 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 4,852,966 (the '966 patent). Applicants again respectfully assert that the '966 patent was misinterpreted in the Office Action because it does not disclose, teach, or otherwise suggest each and every feature of the claims. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

The *Response to Arguments* section of the Office Action dated October 18, 2004 states the following with respect to sec. 102(b) rejection applying the '966 patent:

Applicant also argues that the Examiner misinterpreted Fig. 1 of Kimmichi et al (U.S. Patent 4,852,966). Please note that the Examiner did not use Fig. 1 in the Office action. Nevertheless as the Examiner stated in the previous Office action, Fig. 4 clearly shows the claimed limitations structure wherein an optical fiber can be accessed without substantially disturbing the strength member.

The Office Action is misinterpreting the '966 patent in numerous ways. Moreover, the assertions made in the Office Action regarding the optical cabling element of Fig. 4 are contrary to the disclosure of the '966 patent. Furthermore, the Office Action does not cite any credible evidence of record to support its assertions.

First, the structure shown in Fig. 4 of the '966 patent is not a fiber optic cable, but instead is optical cabling element as overwhelmingly discussed and supported by the objective

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evidence of record. See the entire text of the '966 patent. The '966 patent only depicts fiber optic cables in Figs. 3, 6, and 7. See Col. 1, ll. 35-47 of the '966 patent. Consequently, the optical cabling element shown in Fig. 4 does not include a cable jacket as asserted in the Office Action.

Moreover, it is beyond refute that elements 2,3 of Fig. 4 are tapelike sheets that are secured to corrugated sheet 4 by an adhesive to form the fiber optic cabling element. See Col. 1, ll. 50-63 of the '966 patent. It is absolutely incorrect and contrary to the '966 patent to call elements 2,3 a cable jacket. By way of example, the objective evidence of the '966 patent shows a cable jacket 12 in Fig. 3 surrounding a pair of cabling elements similar to those of Fig. 4 that are wound together. See Col. 2, ll. 28-35 of the '966 patent.

Second, corrugated sheet 4 of the '966 patent is not a strength member because it would not protect the optical fiber from tensile loads. Rather, corrugated sheet 4 is a relatively thin polymer that would not protect the optical fiber under a given tensile load. See Col. 1, ll. 55-57 of the '966 patent. Instead, the '966 patent explicitly states that the cables of Fig. 3, 6, and 7 have a tension proof jacket 12 or a tensionproof central member 16. See Col. 2, ll. 32-58 of the '966 patent, specifically, ll. 32-34, 42-43, and 51-58. Thus, the assertion that corrugated sheet 4 is a strength member is contrary to the objective evidence of record.

Clearly, the Office Action is making an arbitrary and capricious statements that are absolutely contrary to the evidence of the '966 patent. Furthermore, the Office Action does not provide any credible evidence of record to dispute the disclosure of the '966 patent. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1 and 17 applying the '966 patent is warranted and is respectfully requested.

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Claims 10, 24, and 25 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication in view of U.S. Pat. No. 6,137,936 (the '936 patent). The sec. 103(a) rejection of claims 10, 24, and 25 is respectfully traversed for the reasons stated above with respect to independent claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of dependent claims 10, 24, and 25 is warranted and is respectfully requested.

Claims 12, 27, and 32-44 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication without a teaching reference. The sec. 103(a) rejection of claims 12, 27, and 32-44 is respectfully traversed for the reasons stated above with respect to independent claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 12, 27, and 32-42, and 44 is warranted and is respectfully requested.

Claims 6 and 29 were rejected under 35 U.S.C. sec. 103(a) applying the '966 patent without a teaching reference. The sec. 103(a) rejection of claims 6 and 29 is respectfully traversed for the reasons stated above with respect to independent claims 1 and 17. For at least these reasons, withdrawal of the sec. 103(a) rejection of claims 6 and 29 is warranted and is respectfully requested.

No fees are believed due with the filing of this Reply. If any fees are due in connection with this Reply, please charge any fees, or credit any overpayment, to Deposit Account Number 19-2167.

Allowance of all pending claims is believed to be warranted and is respectfully requested.

The Examiner is welcomed to telephone the undersigned to discuss the merits of this patent application.

Respectfully submitted,


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